

PATENT
Attorney Docket No. 09955.0047-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

in re Application of:)
Frédéric FORTIN et al.) Group Art Unit: 3733
Application No.: 10/505,469) Examiner: Woodall, Nicholas W.
Filed: August 20, 2004)
For: FLEXIBLE VERTEBRAL LINKING) Confirmation No.: 4004
DEVICE)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**DECLARATION OF MR. FRÉDÉRIC FORTIN IN SUPPORT OF
PETITION FOR REVIVAL UNDER 37 C.F.R. § 1.137(b) OF AN
APPLICATION FOR PATENT UNINTENTIONALLY ABANDONED**

I, Frédéric Fortin, based on my understanding and belief, declare as follows:

1. I am a coinventor of the inventions disclosed in U.S. Patent Application Serial No. 10/505,469 ("the '469 application").
2. On February 1, 2005, coinventor, Mr. Johann Robin, transferred his entire right, title and interest in the '469 application to me.
3. Thus, from February 1, 2005, until after the present application became abandoned, I held the entire right, title, and interest in the '469 application and had sole decision making authority regarding the prosecution of the '469 application.
4. My entire right, title, and interest in this application was recently assigned to Paradigm Spine, L.L.C.

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5. I am making this Declaration in support of a Petition to Revive the '469 application, which petition I understand will be filed in the United States Patent and Trademark Office ("PTO").

6. I did not intend for any of the inventions disclosed in the '469 application to go abandoned.

7. Moetteli & Associates SaRL, USPTO Customer Number 51,184, (hereinafter "Moetteli") had previously served as my attorneys/agents for this matter before the USPTO.

8. On July 7, 2006, the USPTO mailed an Office Action in the '469 application to Moetteli. I never received a copy of this Office Action.

9. On August 15, 2006, Moetteli submitted a Request to Withdraw from Representation to the USPTO, which Request was denied on August 28, 2006, when the USPTO indicated that Moetteli was not an attorney/agent of record. Notwithstanding, correspondence from the USPTO was still sent to Moetteli's address, not mine.

10. I received no correspondence from the USPTO regarding this Request to Withdraw and did not understand that I was solely responsible for prosecution of this application.

11. Further, I was not informed by Moetteli that it intended to completely withdraw from representation, and I expected Moetteli to continue prosecution of this application.

12. Further, I was never informed by Moetteli of the consequences of failing to respond to the USPTO Office Action, or when a response was due.

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13. I was first informed that the '469 patent application was abandoned when the USPTO mailed a Notice of Abandonment dated February 6, 2007.

14. On April 30, 2007, I submitted a letter to the USPTO indicating that I had not intended to allow this application and copending U.S. Application No. 10/760,075 to go abandoned, and requested information regarding the procedures for reviving the application. To date, I have not received any correspondence from the USPTO regarding my letter.

15. In May of 2007, I agreed with Paradigm Spine, L.L.C. to work together to further develop and possibly commercialize the inventions disclosed in the '469 application. Pursuant to that agreement, I have herewith formally assigned my rights to the '469 application to Paradigm Spine, L.L.C. (copy enclosed).

16. Paradigm Spine, L.L.C. has enlisted the services of Finnegan, Henderson, Farabow, Garrett, and Dunner, L.L.P. to assist in reviving this application, including the preparation of a reply to the outstanding Office Action of July 7, 2006, and a petition to revive the unintentionally abandoned application.

17. The entire delay from the time that the '469 application went abandoned until I learned that it was abandoned in or about February 2007, was unintentional.

18. The entire delay from on or about February 2007 to the present was a consequence of my lack of knowledge about the procedures required to revive the application, negotiations with Paradigm Spine, L.L.C., and the need to enlist the services of an attorney or agent. This delay also was unintentional.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and

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further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Dated: October 14th 2007



Frédéric Fortin